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NTSB Order No. EA-3575

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 13th day of May, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

Docket

SE-10007

ROBERT G. SPRADLIN,

Respondent.

OPINION AND ORDER

The Administrator has appealed from the oral initial decision Administrative Law Judge William R. Mullins issued in this proceeding on October 31, 1989, at the conclusion of an evidentiary hearing.¹ By that decision the law judge reversed an order of the Administrator suspending respondent's airline transport pilot (ATP) certificate for 30 days on allegations that he violated section 91.9 of the

¹An excerpt from the hearing transcript containing the initial decision is attached.

Federal Aviation Regulations ("FAR"), 14 C.F.R. Part 91.²

The facts set forth in the Administrator's order, which was filed as the complaint in this matter, allege in pertinent part as follows:

"2. On November 25, 1987, you acted as pilot in command of [a] Bell Model BH-206B helicopter, N3889W, the property of Air Logistics, Inc., and the property of another.

3. On this date you were in the process of taking off from the helipad at High Island 340 operated by the Penzoil Company, and located approximately 100 nautical miles south of Sabine Pass, Texas, in the Gulf of Mexico. In the process of taking off during deteriorating weather conditions, your aircraft suddenly spun and the tail rotor of your aircraft struck the main rotor blade of the helicopter next to you on the platform, an Aerospatiale, N57812, owned and operated by Petroleum Helicopters, Inc., Lafayette, Louisiana, and the property of another. The aircraft had been tied down by its pilot to await abatement of weather conditions. Your operation of the aircraft in this manner endangered the life and property of others. Your actions were careless in that the aircraft sustained damage to the main rotor blades and the tail rotor blades"

The law judge found that the Administrator failed to establish the allegations by a preponderance of the evidence, and it is the Administrator's position on appeal that this ruling is erroneous.³ Upon consideration of the appeal brief, and of the entire record, the Board has determined that safety in air commerce or air transportation and the

²FAR section 91.9 provided at the time of the incident as follows:

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³The Board has not received a brief in reply from respondent.

public interest require affirmation of the Administrator's order. For the reasons that follow, we will grant the Administrator's appeal and reverse the initial decision.

Respondent, a helicopter pilot for an oil company operating in the Gulf of Mexico, testified that on the day in question he was heading to his base platform, High Island 474, when his foreman called him on the radio and told him that a storm was reaching his location and the weather was deteriorating.⁴ Respondent could see lightning a mile or two from High Island 474. He testified that the entire sky from the southwest to the northeast was black, and the rain was pouring down. He described the storm as "serious."

Respondent elected to go to High Island 340, an offshore platform about 20 miles ahead of the front, and shut down and wait for the storm to pass.⁵ Another helicopter, an Aerospatiale, also landed on the helipad. Once both aircraft were tied down the pilots went below to the living quarters in order to wait out the storm.

About an hour after he shut down his aircraft, respondent received a call from his foreman on High Island 474. The foreman told respondent that the front had cleared out at that location, and that he had 4 miles of visibility.

⁴According to the company's preliminary report of the incident, winds were reported at 35 mph two-hours before the incident.

⁵The platform measures approximately 50 feet by 50 feet.

The foreman had wind instruments which he read to respondent and which indicated that the wind was 020 degrees northeast at 20 to 25 miles per hour. Respondent looked out the window and felt that the weather could improve more before he took off , so he waited for further improvement. Just before returning to the platform, respondent testified that he called the foreman to see if the weather had improved or deteriorated. According to respondent, the foreman reported that there was no change regarding the visibility and the wind speed.

Respondent testified that when he returned to the platform he determined that the weather conditions now met at least the minimums for take off; he had at least 3 miles visibility, explaining that he could see two other platforms, both of them about 3 miles away. There was a light gray uniform cloud ceiling of 500 to 1,000 feet.⁶ According to respondent, it was no longer raining, and in his opinion the winds were 20 to 25 mph.⁷ He also testified that the weather looked extremely good and was clearing to the northwest,

⁶Respondent's company operations manual describe basic VFR weather minimums for offshore flights as consisting of a 500 foot ceiling and at least 3 miles visibility. The operations manual also requires helicopters to be tied down if winds in excess of 40 knots are forecast or thunderstorms or squall line activity is present or forecast. (Exhibit R-6).

⁷Respondent's testimony is not supported by the company preliminary report which reveals that at the time of the incident and one-half hour later, the local observer at High Island 474 reported wind 070 at 37 mph.

which was the direction in which he was heading.

According to respondent, he had just completed his take off check and was hovering, when a "huge gust of wind" impacted his helicopter at 90 degrees on the right side, spinning the aircraft and causing him to hit the other helicopter. Respondent testified that he believes an unexpected microburst or extreme wind shear caused him to lose control of his aircraft.

The only issue before the Board in this appeal is whether respondent's decision to take off in what may be described at best as questionable wind conditions with another helicopter in the downwind position on the helipad, is indicative of clearly deficient judgment so as to constitute carelessness under FAR section 91.9. The law judge found that it was not. We disagree.

The Board has held with regard to helicopter operations near persons or property that there are no minimum permissible clearances applicable and thus, the standard to be applied to helicopter pilots is whether the likelihood of an occurrence (i.e., a collision) is unacceptably high, or the pilot's exercise of judgment in the matter was clearly deficient. The Administrator must "...demonstrate that the operation of a helicopter within a certain distance from an obstacle entailed a risk of collision that a reasonable and prudent pilot would recognize and avoid, not just because of the obvious or

possible consequences of a collision, but, rather, in light of an informed consideration of relevant control and maneuverability characteristics of the helicopter involved, as well as of other factors (e.g. wind conditions) bearing on the pilot's ability to maintain with precision his intended flightpath. When such a showing has been made by a preponderance of the evidence, it may fairly be said that a violation of section 91.9 has been established." Administrator v. Reynolds, 4 NTSB 240, 242 (1982). In our view, the evidence of record supports the Administrator's allegations of carelessness in this case.

The pilot of the second helicopter on the helipad testified that at the time he landed, the weather mass was moving from the northwest to the southeast. He also described the storm as including high winds, thunder, lightning, heavy rain, a low ceiling, and low visibility. The squall was between five to ten miles northwest of High Island 340, moving in the direction of the platform. He and respondent waited together for the storm to pass. They continually looked out of a window in the living quarters, observing the storm.⁸ While they waited, the wind shifted so it was coming from the northeast. This made respondent's aircraft, which was parked to the right of the second pilot's aircraft, the aircraft in

⁸Both pilots testified that they could assess the severity of the storm by looking at the crests of the waves and the effect of the wind on two flags which were on top of the platform.

the upwind position.

After about two hours, respondent decided that he could take off and went to the top of the platform. The second pilot apparently disagreed, as he waited another 25 minutes. Contrary to respondent's testimony, the second pilot testified that when he arrived on top of the platform the wind's speed was still between 25 and 30 knots, and it was still raining. The second pilot found respondent's helicopter completely turned around from the position in which it had been secured, with the nose of the helicopter facing north, into the wind.⁹ He also discovered that his aircraft had been hit by respondent's aircraft, and that both helicopters had sustained damage.

The FAA investigating inspector testified, as did the second pilot, that it would have been preferable for the helicopter in the downwind position to take off first, so that in the event it was blown by a gust of wind it would be blown off of the platform and over the water, rather than into the other helicopter. Respondent's own evidence, an excerpt from an Army helicopter field manual, warns that even after a squall line has passed, "[w]hen operating closer to the ground, the gusty shifting winds associated with a frontal passage can

⁹There was a controversy during the hearing over whether respondent manually turned the aircraft or flew it up to a hover and turned it. Regardless of how he turned it, he apparently at least attempted to take off into the wind.

cause the helicopter to collide with obstacles or the ground." The second helicopter was certainly such an obstacle. According to the FAA inspector, because the Aerospatiale has three blades, even when it was tied down one of the blades would have been jutting out, into the helipad, and respondent admitted that his aircraft was as close as 18 feet to the tip of the forward rotor of the other aircraft.¹⁰ The investigating inspector opined that given the wind conditions, respondent was careless in taking off first. (TR-88). The Board concurs in this assessment. A prudent helicopter pilot would not have taken off from the upwind position, as it was reasonably foreseeable that the winds were still strong enough to present an unacceptably high risk that his aircraft on takeoff could be blown into the other helicopter that was secured downwind of him in close proximity on the platform.

¹⁰The second pilot testified that after the incident, respondent told him that he had considered asking him to reposition the rotor blades of the Aerospatiale in order to give respondent more clearance for the operation of his aircraft.

ACCORDINGLY , IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The initial decision is reversed and the Administrator's order is affirmed in its entirety; and
3. The 30-day suspension of respondent's airline transport pilot certificate shall begin 30 days after service of this order.¹¹

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

¹¹For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR §61.19(f).